

NORTH CAROLINA GENERAL ASSEMBLY
1975 SESSION

CHAPTER 838
HOUSE BILL 1270

AN ACT TO RATIFY AND APPROVE THE CREATION OF THE AVERY'S CREEK SANITARY DISTRICT, HERETOFORE CREATED BY THE BOARD OF COMMISSIONERS FOR THE COUNTY OF BUNCOMBE AND THE NORTH CAROLINA STATE BOARD OF HEALTH (NOW THE COMMISSION FOR HEALTH SERVICES) PURSUANT TO ARTICLE 12 OF CHAPTER 130 OF THE GENERAL STATUTES OF NORTH CAROLINA AND PROVIDING FOR THE ELECTION OF THE AVERY'S CREEK SANITARY DISTRICT BOARD.

Whereas, pursuant to Article 12 of Chapter 130 of the General Statutes of North Carolina the Board of Commissioners for the County of Buncombe by resolution of November 22, 1972, and the North Carolina State Board of Health by action of March 22, 1973, created and established the Avery's Creek Sanitary District; and

Whereas, by resolution of May 5, 1973, the Board of Commissioners for the County of Buncombe pursuant to North Carolina General Statute Section 130-126 determined that the Avery's Creek Sanitary District Board should consist of five members with three members to be elected in the 1974 general election and two members to be elected in the 1976 general election for four-year terms and that their successors should be elected in the same manner every four years; and

Whereas, by resolution of May 5, 1973, the Board of Commissioners for the County of Buncombe pursuant to said law appointed five members to the Avery's Creek Sanitary District Board to serve until their successors were elected and qualified for office; and

Whereas, said resolutions provided that the elections for said sanitary district board members be held in even numbered years; and

Whereas, Articles 23 and 24 of Chapter 163 of the General Statutes of North Carolina provide that elections of sanitary district board members be held in odd-numbered years; and

Whereas, it is the intent of this act to confirm and ratify all proceedings taken in creating the Avery's Creek Sanitary District, in the appointment of the members to the district board; and to provide for the election of the district board members in conformity to the election laws of North Carolina; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. That all the proceedings heretofore taken by the Board of Commissioners for the County of Buncombe and the North Carolina State Board of

Health (now Commission for Health Services) under Article 12 of Chapter 130 of the General Statutes of North Carolina creating the Avery's Creek Sanitary District be and the same are hereby in all respects authorized, ratified, approved, and confirmed.

Sec. 2. The said Avery's Creek Sanitary District is hereby incorporated and declared to be a sanitary district with perpetual existence under the name of "Avery's Creek Sanitary District", and may adopt a corporate seal and may sue and be sued, and may purchase, hold, and convey real and personal property, and shall in addition to the powers hereinafter conferred, be clothed with all powers relating to the establishment, regulation, and control of sanitary districts as now conferred on sanitary districts under the laws of North Carolina.

Sec. 3. The territory comprising said sanitary districts, and being the same territory as shown in the proceedings of the Board of Commissioners for the County of Buncombe and the North Carolina State Board of Health (now Commission of Health Services) in creating said district is described as follows:

Situate, lying and being in the Avery's Creek Township, County of Buncombe, and being bounded by the French Broad River, the Buncombe County-Henderson County Boundary, the Blue Ridge Parkway Land, and the Pisgah National Forest of the United States Forest Service Lands, and more particularly described by metes and bounds as follows:

BEGINNING at the point in the middle of the French Broad River at the Buncombe County-Henderson County boundary opposite the mouth of Line Creek; thence up said creek with the Buncombe County-Henderson County boundary and continuing with said boundary to a point in the boundary of the Pisgah National Forest of the United States Forest Service Lands; thence with said Forest boundary to the Blue Ridge Parkway boundary; thence with said Parkway boundary to another portion of said Forest Land; thence with said Forest boundary to a common corner of the United States Forest Lands and property owned by Daniel Boone Council of the Boy Scouts of America, Inc. as recorded in Deed Book 964 at Page 381 in the Register of Deed's Office for Buncombe County, North Carolina; thence continuing with a boundary between the United States Forest Lands and said Daniel Boone Council to a point in the middle of the French Broad River; thence upstream in a Southeasterly direction with the middle of said river to the Buncombe County-Henderson County boundary, being the point and place of BEGINNING.

Sec. 4. The appointment by the Board of Commissioners for the County of Buncombe of W. Jack Parks, James Byrd, Mrs. Janice Williams, Ralph G. Hill, and James Padgett, as members of the Avery's Creek Sanitary District Board is hereby ratified, approved and confirmed, and that said members of the Avery's Creek Sanitary District shall hold office for a period from the date of their appointment and until the first Monday in December, 1975, when their successors are elected and qualified.

Sec. 5. The Avery's Creek Sanitary District Board shall consist of five members elected from the District for staggered terms of four years as hereinafter

provided. The primary and general elections shall be nonpartisan and shall be conducted by the Buncombe County Board of Elections.

Sec. 6. At the time of the primary election to be held in Buncombe County in 1975, there shall be conducted a nonpartisan primary election for the purposes of nominating candidates for the Avery's Creek Sanitary District Board. If no more than 10 candidates file for office, no primary shall be held and the candidates shall be declared nominated for the general election. If more than 10 candidates file for office then the 10 candidates receiving the highest number of votes cast in the primary shall be nominated as candidates in the general election. In the general election, the three candidates receiving the highest number of votes cast shall be declared elected for four-year terms commencing on the first Monday in December, 1975, and expiring on the first Monday in December, 1979. The two candidates receiving the next highest number of votes cast shall be declared elected for two-year terms commencing on the first Monday in December, 1975, and expiring on the first Monday in December, 1977. Thereafter, as their terms expire, their successors shall be elected for four-year terms as herein provided.

In the years that three members to said board are to be elected, if six or less candidates file for office, no primary shall be held, and the candidates shall be declared nominated for the general election. If six or more candidates file for office, then the six candidates receiving the highest number of votes cast in the primary shall be declared nominated for the general election. In the general election, the three candidates receiving the highest number of votes cast shall be declared elected.

In the years that two members to said board are to be elected, if four or less candidates file for office, no primary shall be held, and the candidates shall be declared nominated for the general election. If four or more candidates file for office, then the four candidates receiving the highest number of votes cast in the primary shall be declared nominated for the general election. In the general election, the two candidates receiving the highest number of votes cast shall be declared elected.

If two or more candidates having the greatest number of votes cast, shall have an equal number of votes, the Buncombe County Board of Elections shall determine by lot which shall be nominated in the primary or elected in the general election.

Sec. 7. Vacancies on said board shall be filled until the next general election by the Board of Commissioners for the County of Buncombe, at which time a successor shall be elected for the unexpired term, if any, or for a full four-year term, if appropriate.

Sec. 8. All elections shall be conducted pursuant to Articles 23 and 24, Chapter 163, of the General Statutes of North Carolina except as otherwise provided in this act.

Sec. 9. The members of the Avery's Creek Sanitary District Board shall have all the powers, duties and obligations conferred upon them by Article 12 of Chapter 130 of the General Statutes of North Carolina.

Sec. 10. All actions and contracts entered into by the present Avery's Creek Sanitary District Board on behalf of the Avery's Creek Sanitary District from and after May 9, 1973, shall be and the same are hereby approved, ratified, and confirmed.

Sec. 11. This act shall become effective upon ratification.

In the General Assembly read three times and ratified, this the 25th day of June, 1975.